

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DIANE PERITZ,

Plaintiff,

-against-

NASSAU COUNTY BOARD OF COOPERATIVE EDUCATIONAL
SERVICES, BONNIE HELLER and JANET WEISEL,

Defendants.

Supreme Court
Mineola, New York

July 26, 2017
10:00 a.m.

DEPOSITION of JANET WEISEL, a Defendant
herein, taken by the Plaintiff, pursuant to
Federal Rules of Civil Procedure and Notice, held
at the above-mentioned time and place, before a
Notary Public of the State of New York.

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A P P E A R A N C E S :

LAW OFFICES OF MINDY KALLUS
Attorney for the Plaintiff
3220 Netherland Avenue
Suite 5D
Bronx, New York 10463

BY: MINDY KALLUS, ESQ.

SILVERMAN & ASSOCIATES
Attorneys for the Defendants
445 Hamilton Avenue
Suite 1102
White Plains, New York 10601

BY: CAROLINE LINEEN, ESQ.

ALSO PRESENT: Diane Peritz

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between
the attorneys for the respective parties herein,
that filing, sealing and certification, and the
same, are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all
objections except as to the form of the question
shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the
within deposition may be signed and sworn to by
an officer authorized to administer an oath, with
the same force and effect as if signed and sworn
to before the Court.

1
2 J A N E T W E I S E L, after having been
3 first duly sworn by a Notary Public of the State
4 of New York, was examined and testified as
5 follows:

6 EXAMINATION BY

7 MS. KALLUS:

8 Q State your name for the record, please.

9 A Janet Weisel.

10 Q State your address, please.

11 A 1390 Richmond Court, East Meadow, New
12 York 11554.

13 Q My name is Mindy Kallus. I represent
14 Diane Peritz in connection with her lawsuit
15 against you and BOCES and Bonnie Heller pursuant
16 to the Americans with Disabilities Act and New
17 York State Disability Law.

18 I'm going to start with just a few
19 preliminary instructions so that you understand
20 how this deposition will proceed.

21 First, I'm going to ask you a series of
22 questions. If you don't understand those
23 questions, please ask me and I will be sure to
24 clarify them for you.

25 If you need a break at any time, I'll be

1 - J. Weisel -

2 happy to provide you with a break, provided that
3 you answer whatever pending question there is
4 before you.

5 Hopefully, this will proceed smoothly.

6 Have you taken any medication which
7 would interfere with your ability to testify
8 truthfully today?

9 A No.

10 Q Could you tell me who your employer is?

11 A I'm not currently employed.

12 Q Are you retired?

13 A Yes.

14 Q When did you retire?

15 A As of January 31, 2017.

16 Q Who was your employer at the time of
17 retirement?

18 A Nassau BOCES.

19 Q How long were you employed by Nassau
20 BOCES?

21 A Over 20 years.

22 Q I'll get back to this matter in a little
23 bit, but first I'm going to ask you a few
24 preliminary questions again.

25 Did you prepare for this deposition?

1 - J. Weisel -

2 MS. LINEEN: Note my objection to
3 form.

4 You can answer.

5 A Did I prepare?

6 MS. LINEEN: If you can answer the
7 question.

8 A I'm not sure what you mean by "prepare."

9 Q You knew you were coming to a
10 deposition. Did you review any documents related
11 to this case?

12	A	Yes.
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13 Q What documents did you review?

14 A I reviewed my notes and I reviewed the
15 evaluation.

16 Q When you say "evaluation," which
17 evaluation are you referring to?

18 A The last evaluation. The summative
19 evaluation.

20 Q When was that dated?

21 A I don't know off the top of my head.

22 Q I'll just ask you a few questions about
23 the possible date. Was it in June of 2015?

24 MS. LINEEN: Objection to form.

25 You can answer, if you can.

1 - J. Weisel -

2 A I don't believe so. I think it was
3 probably earlier than that.

4 Q So, it was an evaluation that was
5 earlier than June? Closer in time to the time
6 that Ms. Peritz was hired?

7 A I'm talking about the last evaluation.
8 I don't know the date. I'm sorry, I can't give
9 you the date.

10 Q By "last evaluation," you mean the last
11 evaluation that occurred before the plaintiff was
12 terminated?

13 A Yes.

14 Q You prepared that evaluation in writing?

15 A Yes.

16 Q Was it typed up?

17 A Yes.

18 Q When you reviewed those documents, did
19 you review them on your own or with the
20 assistance of counsel, without telling me what
21 your counsel said?

22 MS. LINEEN: I'm going to object to
23 the form.

24 You can answer.

25 A I was with counsel.

1 - J. Weisel -

2 Q How long would you say you prepared for
3 this deposition?

4 A For an hour.

5 Q While you were employed by BOCES, did
6 you have the same title for the entire period?

7 A Throughout my entire employment?

8 Q Yes.

9 A No.

10 Q When you first started with BOCES, what
11 was your title?

12 A Occupational therapist.

13 Q How long did you work as an occupational
14 therapist for BOCES?

15 A As an employee, I think approximately
16 two years.

17 Q After those two years, what did you do
18 for BOCES?

19 A I was the assistant coordinator for
20 occupational therapy and physical therapy
21 services.

22 Q What did you do in that role?

23 A I was the assistant in supervising the
24 OTs and PTs for Nassau BOCES.

25 Q I'm sorry, did you tell me how long you

1 - J. Weisel -

2 did that as an assistant coordinator?

3 A You didn't ask me. It was approximately
4 16 years.

5 Q Following your position as the assistant
6 coordinator, what did you do?

7 A Retired.

8 Q So, for 16 years, you had the exact same
9 role?

10 A Yes.

11 Q During that role, did you actually
12 perform as an occupational therapist?

13 A I don't understand the question.

14 MS. LINEEN: Let me object to the
15 form.

16 You can answer, if you understand.

17 Q When you worked for 16 years for BOCES,
18 were you actually working treating students?

19 MS. LINEEN: Objection to form.

20 You can answer. If you can.

21 A I did not directly treat students.

22 Q So, could you describe further your role
23 more fully? What exactly did you do?

24 A I supervised therapists, I acted as a
25 consultant to school districts, and I assisted my

1 - J. Weisel -

2 supervisor, and ran various programs.

3 Q Who was your supervisor?

4 A Lorraine Rowe.

5 Q What was her title?

6 A Coordinator of occupational therapy and
7 physical therapy services.

8 Q In your role as assistant coordinator,
9 did you make decisions to hire occupational
10 therapists?

11 MS. LINEEN: Objection to form.

12 You can answer.

13 A No. I made recommendations.

14 Q Who did you make the recommendations to?

15 A To people in central office, whoever it
16 was at the time, and HR.

17 Q I'm going to step back in time a little
18 bit and then move forward to discuss your
19 academic degrees.

20 Did you graduate from high school?

21 A Yes.

22 Q What high school did you graduate?

23 A I went to Shawnee Mission South High
24 School -- excuse me, Shawnee Mission East High
25 School in Kansas.

1 - J. Weisel -

2 Q Did you go to college?

3 A Yes.

4 Q Where did you graduate from college?

5 A University of Minnesota.

6 Q Do you remember the year of your degree?

7 A Yes, I do. 19 -- it probably was

8 1970. The actual date.

9 Q After college, did you begin graduate
10 school?

11 A No.

12 Q What happened after college? Where did
13 you go after you graduated from college?

14 MS. LINEEN: In terms of working or
15 location?

16 MS. KALLUS: Both.

17 MS. LINEEN: Objection to form.

18 You can answer.

19 Q My question is: After you graduated
20 from college, what did you do next? Did you find
21 a job?

22 A Yes.

23 Q What was the job?

24 A My first job was at Pilgrim State
25 Hospital.

1 - J. Weisel -

2 Q Where is that?

3 A In Brentwood.

4 Q Is that California?

5 A New York.

6 Q How long were you at Pilgrim State
7 Hospital?

8 A I don't recall exactly, but not very
9 long. I was there maybe about eight months.

10 Q Why did you leave?

11 A I didn't enjoy the job.

12 Q Why didn't you enjoy the job, what was
13 it about the job?

14 MS. LINEEN: Objection.

15 You can answer.

16 A I was responsible -- there was one
17 therapist for 500 patients and I found that to be
18 ineffective.

19 Q After you left Pilgrim State Hospital,
20 where did you work?

21 A I worked at Long Island Jewish Hospital.

22 Q How long did you work there?

23 A I have to figure it out. I worked there
24 from until 1980 -- I started working there some
25 time in 1977, so I would say approximately three

1 - J. Weisel -

2 years.

3 Q After Long Island Jewish Hospital, where
4 did you work?

5 A I worked for a private physician.

6 Q What did you do for the private
7 physician?

8 A I was an occupational therapist.

9 Q Was the private physician your
10 supervisor?

11 A Yes, he was.

12 Q How long did you work there?

13 A Approximately, three years.

14 Q What was the name of the private
15 physician?

16 A Tom Palmieri, P-A-L-M-I-E-R-I.

17 Q After working for the private physician,
18 where did you work?

19 A I had a brief time off. I didn't work
20 at all, and then I later worked for Glen Cove
21 Community Hospital.

22 Q How long did you work for Glen Cove
23 Community Hospital?

24 A Maybe about a year.

25 Q When you took a brief time off, how

1 - J. Weisel -

2 brief was it and what did you do during that
3 time?

4 A I raised my family. I don't know
5 exactly how long it was. Maybe about two years.

6 Q After you left Glen Cove Community
7 Hospital, where did you work?

8 A I worked for New York Therapy. It's an
9 agency.

10 Q How long did you work with New York
11 Therapy?

12 A I worked for them off and on for many
13 years.

14 Q Do you have an end date?

15 A I don't recall exactly.

16 Q When you stopped working for New York
17 Therapy, where did you work?

18 A As part of New York Therapy and while I
19 was working for New York Therapy, I also worked
20 for Nassau BOCES.

21 Q So, when you started working for Nassau
22 BOCES, you were also working for New York Therapy
23 at the time?

24 A I was working for New York Therapy and I
25 was placed at Nassau BOCES initially.

1 - J. Weisel -

2 Q And then you started to work exclusively
3 for Nassau BOCES?

4 MS. LINEEN: Objection to form.

5 You can answer.

6 A At some point, yes, I did.

7 Q Do you recall the year?

8 A That I worked exclusively for Nassau
9 BOCES?

10 Q Yes. When did you start working
11 exclusively for Nassau BOCES? .

12 A I believe -- I have to think about it
13 for a minute. I believe it was approximately --
14 excuse me a second. I have to think about it.
15 Approximately, 1994 or 1995.

16 Q During the 16 years that you worked for
17 BOCES in the supervisory capacity as an assistant
18 coordinator, did you ever treat the students?

19 MS. LINEEN: Asked and answered.

20 You can answer.

21 A I did not directly treat students in
22 that role, no.

23 Q Did you treat students outside of Nassau
24 BOCES or was the 16-year period exclusively a
25 time employed by BOCES?

1 - J. Weisel -

2 A I did not treat any students through
3 Nassau BOCES. Outside of BOCES, I have, on
4 occasion, treated a student.

5 Q Beginning in 1994?

6 MS. LINEEN: Objection to form.

7 A Beginning with when I started working
8 when I graduated.

9 Q How many schools fall within BOCES'
10 jurisdiction?

11 MS. LINEEN: I'm going to object.

12 Do you mean component school
13 districts or programs within BOCES,
14 because they're different things?

15 MS. KALLUS: I'm sorry, you said
16 programs and what was the other?

17 MS. LINEEN: Component school
18 districts. So, BOCES provides
19 services to component school
20 districts, let's say Garden City
21 School District, but then BOCES has
22 its own program. I'm trying to
23 figure out what you're asking about.

24 Q In your employment at BOCES, did you
25 work with component school districts?

1 - J. Weisel -

2 A Yes.

3 Q Can you name some of those component
4 school districts?

5 A In which capacity?

6 Q As assistant coordinator.

7 A There are 56 school districts in Nassau
8 County.

9 Q Fifty-six?

10 A Yes.

11 Q Did you also work with BOCES programs?

12 A Yes.

13 Q How many programs are there within
14 BOCES?

15 A It varied over the 16 years.

16 Currently -- are you talking about locations or
17 are you talking about overall programs?

18 Q Overall programs.

19 A I have to figure it out.

20 Q Take your time.

21 MS. LINEEN: If you can do it, you
22 can. If you can't, tell her that.

23 A Approximately, seven.

24 Q So, you just testified there were 56
25 component school districts. What kind of work

1 - J. Weisel -

2 did you do for each district?

3 A It varied by district.

4 Q On a given day, how many school
5 districts, if you can estimate, did you work
6 with?

7 MS. LINEEN: Objection to form.

8 If you can answer, go ahead.

9 A That's not how it worked. I'm not sure
10 what you're asking me.

11 Q I'm trying to figure out a day in your
12 life as the assistant coordinator working with
13 many programs and many school districts. What
14 did that work entail, if you can give me an
15 example?

16 MS. LINEEN: I'm going to object to
17 the form.

18 If you can answer the question, go
19 ahead.

20 A That's a very broad question. We had
21 students from most of the 56 school districts.
22 On any given day, I get phone calls from a
23 district, from employees of that district or
24 parents of the students. I was responsible for
25 an assistive technology program that serviced

1 - J. Weisel -

2 many, if not most, of the 56 school districts.

3 There were other programs over the years
4 that involved the district directly, and
5 certainly the students that came from the
6 districts could have been from any of the 56.

7 Q Do you know how many occupational
8 therapists BOCES employed in the 2015/2016 school
9 year?

10 A I don't know precisely. I can give you
11 an approximation.

12 Q Okay.

13 A I would say approximately 60 or 65.

14 Q Were you involved in the hiring of most
15 of those 60 or 65 occupational therapists?

16 MS. LINEEN: Objection to form.

17 You can answer, if you can.

18 A Many of them. I don't know who. I
19 would have to sit and look at the names to know
20 whether it was most. Many.

21 Q Were you the principal decision maker in
22 connection with hiring?

23 A No.

24 MS. LINEEN: Objection to form.

25 You can answer.

1 - J. Weisel -

2 MS. KALLUS: She may object to the
3 form, but it does not in any way --

4 MS. LINEEN: I just told her she can
5 answer.

6 MS. KALLUS: -- make it impossible
7 for you to answer.

8 If you have a problem understanding
9 my question, you can ask me.

10 A Can you repeat your question?

11 MS. KALLUS: I'm going to ask the
12 court reporter to read it back.

13 (Whereupon, the record was read by
14 the reporter.)

15 A No.

16 Q Was there one person who was the
17 principal decision maker?

18 A HR made that decision, and the Board is
19 the entity that actually did the hiring.

20 Q Did the Board interview the prospective
21 employees?

22 A No.

23 Q Did the Board rely on recommendations
24 for hiring?

25 MS. LINEEN: For hiring OTs at a

1 - J. Weisel -

2 certain point?

3 MS. KALLUS: That's what we're
4 talking about. I was talking about
5 specifically the 2015/2016 school
6 year and I was asking her whether the
7 Board relied upon recommendations of
8 others in connection with hiring.

9 MS. LINEEN: Object to form.

10 You can answer.

11 A Yes.

12 Q Did you make such recommendations in
13 connection with hiring occupational therapists?

14 A Yes.

15 Q Did you know Diane Peritz before she was
16 hired by BOCES?

17 A No.

18 Q Had you heard of her?

19 A No.

20 Q How did you decide to interview her for
21 the OT position that was open in the spring of
22 2015?

23 A Her name appeared upon the Nassau County
24 Civil Service Commission list.

25 Q Could you explain the process by which

1 - J. Weisel -

2 you would go through the Nassau County Civil
3 Service list?

4 MS. LINEEN: Objection to form.

5 You can answer.

6 A If I had need for a therapist, if there
7 were mandates that needed to be covered, then I
8 would have my secretary complete a form, request
9 for personnel, that would go to HR. They would
10 then send for a list for the Nassau County Civil
11 Service Commission. When that list came back,
12 they would provide me with a list and canvass
13 letters would go out to the prospective people on
14 the list. I would interview from the people that
15 were reachable on that list.

16 Q Do you specifically recall that you
17 interviewed Diane after examining the Civil
18 Service list that you mentioned earlier?

19 A Yes.

20 Q So, are you testifying that Diane
21 received a canvass letter before?

22 A No, I'm not testifying that she received
23 a canvass letter.

24 Q Could you explain to me what your
25 reference was just a minute ago to canvass

1 - J. Weisel -

2 letters?

3 A That was the procedure, but I'm not the
4 one in charge of sending them out, nor do I know
5 whether she received one. I would not have a way
6 to know that.

7 Q Who sent the canvass letters out?

8 A HR.

9 Q So, when you interviewed her, you don't
10 actually know whether she did or didn't receive a
11 canvass letter, that's not something you would
12 know?

13 A I don't.

14 Q Do you recall the interview you
15 conducted with Diane at the time she was called
16 in to BOCES for an interview?

17 A I'm not sure I understand what you're
18 asking.

19 Q Did you interview Diane Peritz in
20 connection with hiring her?

21 A Yes.

22 Q Do you recall what happened during that
23 interview?

24 A General terms.

25 Q You can tell me what the general terms

1 - J. Weisel -

2 are.

3 A I recall having an interview in my
4 office. I recall that typically, and I'm sure in
5 this case, that I explained what the job would
6 entail, the population, what BOCES is about.

7 That kind of thing. I recall that Diane
8 mentioned that she was interested in Nassau BOCES
9 because it was closer to her home and she was
10 finding the commute to be onerous. Those are the
11 basic details.

12 Q Did you discuss with her the OT path to
13 permanent status at that interview?

14 MS. LINEEN: Objection to form.

15 You can answer.

16 A I don't recall, but I imagine I
17 discussed it in general terms, yes.

18 Q What do you think you would have told
19 her about permanent status?

20 A I imagine I would have described the
21 typical format, which is that you are hired as a
22 temporary employee under Nassau County Civil
23 Service Commission Regulations. After
24 approximately six months, the Board has to make a
25 recommendation to the Civil Service Commission to

1 - J. Weisel -

2 change that status, and that I would be doing
3 observations and then making a recommendation to
4 the Board, but they would make that decision.

5 Q Did you explain that it was a sure
6 process?

7 MS. LINEEN: Objection to form.

8 You can answer.

9 A I don't believe so.

10 Q Did you know that she left a permanent
11 position with the Board of Education when she
12 joined BOCES?

13 A I believe she told me that, yes.

14 Q Did you speak to any of her references,
15 either before or after your interview?

16 A No, I did not.

17 Q So, basically, you hired her without
18 speaking to references?

19 MS. LINEEN: Objection to form.

20 You can answer.

21 A I obtained references. I did not speak
22 to her references.

23 Q You read the references?

24 A Yes.

25 Q Is that standard practice at BOCES not

1 - J. Weisel -

2 to telephone references?

3 MS. LINEEN: Objection.

4 You can answer.

5 A I don't think that there's a standard
6 across the board. Every administrator handles it
7 the way they see fit.

8 Q Did you usually telephone references for
9 other OTs that you interviewed?

10 MS. LINEEN: Objection.

11 You can answer.

12 A My secretary did and I read them, yes.

13 Q Did your secretary call references in
14 this case?

15 A I believe so.

16 Q So, in the context of the world of
17 occupational therapists at BOCES, occupational
18 therapists have to be observed; is that right?

19 A I'm not sure what -- please be more
20 specific in your question.

21 Q As part of the review of an
22 occupational therapist at BOCES, is part of that
23 having observations of the occupational
24 therapist?

25 A For what period of time?

1 - J. Weisel -

2 Q Once she begins employment or he begins
3 employment.

4 A Yes.

5 Q With respect to occupational therapists,
6 is there a set number of observations that take
7 place in a given school year?

8 MS. LINEEN: Objection.

9 A It differs depending on your status at
10 Nassau BOCES.

11 Q By "status" you mean whether you're
12 probationary or you're permanent?

13 A Yes.

14 Q With respect to probationary employees,
15 how many observations are they required to have?

16 A There's no requirement specifically.
17 Typically, I did three to four.

18 Q In the school year?

19 A Within their probationary period.

20 Q So, within 26 weeks?

21 A That varied because of summers, so
22 within the probationary period.

23 Q Do you have any recollection of the
24 first observation that involved Diane?

25 A I do.

1 - J. Weisel -

2 Q Do you know when that occurred?

3 A It was in the spring of 2015. I believe
4 in May.

5 Q Do you recall the name of the student?

6 A No.

7 Q If I tell you the name of the student
8 was R.C., does that name refresh your
9 recollection?

10 MS. LINEEN: For the record, we're
11 going to use initials for students.

12 MS. KALLUS: You can put R.C., but I
13 need to tell her the name or she
14 won't know what I'm talking about.

15 Q Do you recall that name?

16 A I don't recall the student's name.

17 Q Would there be any documents that BOCES
18 has that would contain the student's name in
19 connection with Diane Peritz's first observation?

20 MS. LINEEN: Objection to form.

21 You can answer.

22 A No. There would be a note that she
23 would have written for that session, but I never
24 read the note. Typically, it would not contain
25 anything about her being observed.

1 - J. Weisel -

2 Q Did you take any notes of that first
3 observation?

4 A I don't recall.

5 Q Did you reach any conclusions with
6 respect to that first observation?

7 MS. LINEEN: Note my objection to
8 form.

9 You can answer.

10 A No.

11 Q You didn't reach any conclusions?

12 MS. LINEEN: Asked and answered.

13 MS. KALLUS: I just want to make
14 sure. That's the subject of the
15 entire lawsuit.

16 MS. LINEEN: But she answered that.

17 You can answer again.

18 A I did not make a conclusion based on
19 that one observation. No, I did not.

20 Q Do you recall how it went, in your view?

21 A It did not go well.

22 Q The first observation?

23 A Correct.

24 MS. KALLUS: Let's take a break.

25 (Whereupon, a short recess took

1 - J. Weisel -

2 place.)

3 Q Just a few more questions with respect
4 to the interview process. Did you know what
5 Diane's ranking on the Civil Service exam was?

6 A I don't recall.

7 Q Did it have to be above a certain number
8 for you to interview her?

9 A Yes.

10 Q What was that number?

11 A It depends on the time of the year. I'm
12 required to stay within the top three people,
13 which sometimes is one score if there are many
14 people within the score.

15 Q In connection with interviewing Diane,
16 did you speak to a woman named Grazina?

17 MS. LINEEN: Objection.

18 You can answer.

19 A Did I speak to somebody named Grazina?
20 No, I did not.

21 Q Did you speak someone named Gina?

22 A Did I?

23 Q Yes.

24 A No.

25 Q Going back to a discussion on the first

1 - J. Weisel -

2 observation. You testified earlier that it
3 didn't go well; is that right?

4 A Yes.

5 Q What didn't go well about it?

6 A As I recall, the student had some
7 behavioral issues. For example, I recall that
8 the student threw something out the window. I
9 don't remember at this point what it was, but
10 something was thrown out the window and Diane
11 asked the student if he wanted to go out to
12 retrieve the object which, in effect, stopped the
13 session and then proceeded to do that, to go take
14 the student, go outside, and retrieve whatever it
15 was and come back. So, there was very little
16 therapy that occurred. Very little time to be
17 addressed in the therapy. That was one issue.

18 When I recall discussing afterwards
19 whether or not -- asking afterwards whether or
20 not the student had a Behavioral Intervention
21 Plan or a BIP and Diane was unaware of whether he
22 did, so therefore, it was not following his
23 specific behavioral plan if he had a formal plan,
24 which I don't know whether he did or didn't but
25 she was unaware of whether he did or didn't and

1 - J. Weisel -

2 that was a problem, as well.

3 I don't recall other specifics about
4 that particular observation.

5 Q Did you take any notes related to that
6 observation?

7 MS. LINEEN: Asked and answered.

8 You can answer again.

9 A I don't recall taking notes. I don't
10 have any notes from it.

11 Q Did you grant Diane permission to take
12 the student out of the classroom to retrieve what
13 he had thrown out the window?

14 MS. LINEEN: Objection to form.

15 You can answer.

16 A It's not my giving permission or not.
17 It was her session and I was there to observe her
18 session.

19 Q Do you typically take notes when
20 conducting observations of occupational
21 therapists?

22 MS. LINEEN: Objection to form.

23 You can answer.

24 A I typically jot down a few words so that
25 I can discuss specific parts of the observation

1 - J. Weisel -

2 with the therapist at the end of the observation.

3 Q You earlier testified that Diane started
4 on a part-time basis with BOCES.

5 A I don't believe I testified to that.

6 Q If I didn't ask you that question
7 before, I'm asking it to you now. Did she start
8 on a three-day-a-week basis?

9 A I believe so, yes.

10 Q Did you recommend her for a full-time
11 position?

12 A Yes.

13 Q What were your reasons for hiring her?

14 A I had mandates that needed to be
15 covered. Diane was already working for Nassau
16 BOCES. I had the impression that she wanted to
17 work eventually full-time for Nassau BOCES
18 because she wanted to shorten her commute time.
19 It meant that I didn't have to go through the
20 Nassau County Civil Service Commission process,
21 so it made it easier for her and easier for me.

22 Q At that time, did you check to see
23 whether she was performing well at Nassau County
24 BOCES?

25 MS. LINEEN: Objection to form.

1 - J. Weisel -

2 You can answer.

3 A No. That wasn't part of that decision
4 at that time.

5 Q So, part of the decision at that time
6 was that it was convenient for Nassau County
7 BOCES to have her full-time?

8 MS. LINEEN: Objection to form.

9 You can answer.

10 A Yes. It was shortly after she started
11 working there. She had not yet been evaluated,
12 and yes, it was -- yes. It was increasing the
13 time that she would be working.

14 Q I'm going to have the court reporter
15 mark as Plaintiff's Exhibit 1 the following
16 document for you to take a look at, Ms. Weisel.

17 (Whereupon, Plaintiff's Exhibit 1
18 was marked for identification.)

19 MS. LINEEN: Take a second to look
20 at it and wait for her question.

21 A (Complying.)

22 Q Are you finished reviewing it?

23 A Yes.

24 Q Is the formal name of this document
25 Classified Employee Evaluation Report?

1 - J. Weisel -

2 A Yes.

3 Q How many Classified Employee Evaluation
4 Reports are prepared for probationary employees
5 such as occupational therapists like Diane?

6 MS. LINEEN: Objection to form.

7 You can answer.

8 A One of these particular forms is
9 completed on an employee once a year.

10 Q So, once a year at the conclusion of the
11 year?

12 MS. LINEEN: Objection to form.

13 A Typically, yes.

14 Q Is this form one that was prepared by
15 you?

16 A Yes.

17 Q Filled out by you?

18 A Yes.

19 Q You concluded that her work was
20 satisfactory. Is that what it says on that
21 document?

22 MS. LINEEN: Objection.

23 The document speaks for itself, but
24 you can answer.

25 A I indicated that her work was

1 - J. Weisel -

2 satisfactory, yes.

3 Q This form was prepared after the first
4 observation?

5 A Yes.

6 Q So, you determined not to make any
7 reference to any concerns that you expressed here
8 with respect to her first observation in the
9 spring of 2015?

10 MS. LINEEN: Objection to form.

11 You can answer the question, if you
12 can.

13 A Can you ask me the question again?

14 Q You did not reference in this Classified
15 Employee Evaluation Report any of the concerns
16 that you just expressed to me in connection with
17 the first observation? No mention of the first
18 observation was made in this report?

19 MS. LINEEN: That's the question?

20 MS. KALLUS: Yes.

21 MS. LINEEN: Objection to form.

22 To the extent the document speaks
23 for itself, you can answer.

24 A I'm not sure that there was a question.
25 You made a statement.

1 - J. Weisel -

2 Q I had a question. You determined not to
3 include any of the concerns that you testified to
4 two minutes ago in this evaluation report?
5 That's all.

6 MS. LINEEN: That's a statement
7 clearly.

8 MS. KALLUS: No. It's a question.

9 MS. LINEEN: No, it's not a
10 question.

11 MS. KALLUS: Yes, it is.

12 Q What I'm asking is --

13 MS. LINEEN: Then ask it in a
14 question form.

15 MS. KALLUS: A question form in the
16 English language requires a question
17 mark at the end of the statement, and
18 there was a question mark at the end
19 of my statement.

20 Q Why didn't you include any references to
21 the earlier observation?

22 MS. LINEEN: Objection to form.
23 You can answer.

24 A Typically, I do several observations on
25 every probationary employee. Though I don't make

1 - J. Weisel -

2 it clear to the people that I am observing, I use
3 the first evaluation as kind of a trial -- the
4 first observation is kind of a trial observation
5 that I don't put a lot of weight on because I
6 understand that people might be nervous with the
7 process. They're new at BOCES. There could be
8 any number of reasons why it might not go well.
9 And I put much more weight on the following
10 observations where I assume that there will be
11 much improvement noted. So, I did not include in
12 that observation my concerns for those reasons.

13 Q Did you express any concerns to Diane
14 after the first observation?

15 A Yes, I did.

16 Q What did you tell her?

17 A I don't recall my exact words.

18 Q I don't need your exact words. I said
19 "what," a general question.

20 MS. LINEEN: Objection to form.

21 You can answer.

22 MS. KALLUS: That was not a
23 question. That was just a statement.

24 MS. LINEEN: I'm objecting to the
25 form to whatever.

1 - J. Weisel -

2 You can answer.

3 A I expressed that I was concerned with
4 the fact that she did not seem to have a lot of
5 control over the student, instructional control,
6 and that she was unaware of the status of the
7 student's BIP or any other behavioral plan that
8 the student might have. And I was concerned that
9 she took the student outside of the building
10 without knowing whether for that student that was
11 okay.

12 Q How long was she outside the building?

13 A I don't recall exactly.

14 Q Five minutes, ten minutes, do you
15 recall?

16 MS. LINEEN: Objection to form.

17 You can answer.

18 A Something within that realm.

19 Q I may have asked this but let me
20 rephrase. How do you remember with respect to
21 the first observation that you expressed concerns
22 to Diane if you took no notes and it's two years
23 later?

24 MS. LINEEN: Objection.

25 You can answer.

1 - J. Weisel -

2 MS. KALLUS: It's not a joke, okay?

3 I don't need to be subject to jokes.

4 I don't mind objections.

5 MS. LINEEN: That's my objection.

6 She can answer. I don't -- never

7 mind. I'm not going to make a

8 speaking objection. You can answer.

9 A I remember the incident because it was
10 unusual and I remember having a conversation with
11 Diane about it afterwards. I am not -- that's
12 what I remember. You're asking what my memory is
13 and I'm telling you my memory.

14 Q Did you tell Diane at the time of the
15 first observation that you would be conducting a
16 second observation the same part of the school
17 year, spring or summer of 2015?

18 A I would not have told her that I would
19 observe here that summer.

20 Q Later in the spring?

21 A I don't recall.

22 Q During the spring of 2015, including the
23 date of the evaluation report, did you receive
24 any feedback from any of Diane's co-workers?

25 A I'm not sure I understand the period of

1 - J. Weisel -

2 time you're asking me about.

3 Q Start of her employment in March of 2015
4 through the date of the Classified Employee
5 Evaluation Report, did you receive feedback?

6 A From any of her co-workers?

7 Q Yes.

8 A Yes, I did.

9 Q What was the feedback that you received?

10 A Many people -- some people -- people
11 found that Diane was rather arrogant, talked
12 about the fact that she had many years of
13 experience but was reluctant to accept any kind
14 of assistance.

15 Q Who were those individuals who raised
16 that comment?

17 A Therapists that worked with her.

18 Q Do you recall any names?

19 A I can't specifically say who said what, no.

20 Q Did you get any feedback from any
21 teachers during that period from March through
22 June of 2015?

23 A No, I did not.

24 Q Did you receive any feedback from aides
25 during that time period?

1 - J. Weisel -

2 A At that time, no, I did not.

3 Q Were you the person who approved Diane
4 for summer work for the summer of 2015?

5 A I am the person who recommended that she
6 work over the summer to HR, yes.

7 Q Do you recall who you recommended this
8 to, what HR person?

9 A Both Linda O'Leary in HR and Barbara
10 Longo, L-O-N-G-O.

11 Q What was your involvement in the summer
12 program as assistant coordinator? Were you
13 involved in the day-to-day summer program?

14 A That's difficult to answer that question
15 because it's a very large program, so I would
16 need something more specific.

17 Q Do you want to just describe what you
18 did for the summer program in your capacity as an
19 assistant coordinator.

20 A I made sure there was enough staffing.
21 The summer program runs differently than the
22 school year program, so I -- certain of the
23 programs I helped assign students to therapists,
24 just divided up caseloads. And to make sure that
25 students had -- I had to keep track that the

1 - J. Weisel -

2 students had their doctor prescriptions.

3 Q Did you get any feedback about Diane
4 while she was an employee in the summer program?

5 A No.

6 Q I'm just asking you to consider the
7 period from March of 2015 through June of 2015.
8 During that period, did you ever compliment
9 Diane's work?

10 A I don't recall.

11 Q Are you saying that from your first
12 observation you had nothing complimentary to say?

13 MS. LINEEN: Objection to form.

14 You can answer.

15 A I didn't say that. I said, I don't
16 recall.

17 Q It seems to me that there's some
18 complimentary material in Plaintiff's Exhibit 1,
19 or do you disagree with that?

20 MS. LINEEN: Objection to form.

21 The document speaks for itself.

22 You can answer.

23 A I feel that this is neither
24 complimentary nor critical of her performance as
25 a therapist.

1 - J. Weisel -

2 Q But you found her work satisfactory,
3 right?

4 MS. LINEEN: Objection to form.

5 The document speaks for itself.

6 Asked and answered. You can answer
7 it again.

8 A Yes. Overall I put down that she was
9 satisfactory.

10 Q Did you consider putting down
11 unsatisfactory for any of those categories that
12 are listed in the evaluation report?

13 MS. LINEEN: On Exhibit 1 in front
14 of you?

15 MS. KALLUS: Yes.

16 A Not that I remember.

17 MS. KALLUS: I'm going to have this
18 marked as Plaintiff's Exhibit 2.
19 It's a multi-page document. It
20 starts at Defendant's 274 and ends
21 with Defendant's 278.

22 (Whereupon, Plaintiff's Exhibit 2
23 was marked for identification.)

24 Q Take some time to read that.

25 A (Complying.)

1 - J. Weisel -

2 Q Is that your handwriting?

3 A Yes, it is.

4 Q Could you describe what these notes are?

5 A They are notes that I took for myself
6 during the observation of Diane.

7 Q More than one observation?

8 A Yes.

9 Q Did you later type up these notes?

10 A I did.

11 Q So, you personally typed this up?

12 A I did.

13 Q I'm going to show you another document.

14 (Whereupon, Plaintiff's Exhibit 3
15 was marked for identification.)

16 MS. KALLUS: Let the record reflect
17 that I had the court reporter mark as
18 Plaintiff's Exhibit 3 a typewritten
19 document Bates number DEF 279 and 280.

20 Q The contents of these two documents that
21 I had marked as Plaintiff's Exhibit 2 and
22 Plaintiff's Exhibit 3 are they nearly identical.
23 Did you leave anything out in the typewritten
24 document that is in the handwritten one?

25 MS. LINEEN: Objection.

1 - J. Weisel -

2 Let's mark it.

3 (Whereupon, Plaintiff's Exhibit 2A
4 was marked for identification.)

5 A It says, Schedule another observation.

6 Diane, 9/30/15, M. should know work area
7 prior to entering room. Should utilize
8 one-to-one. Needs to be more in control.
9 Question mark, plan, Question mark, not obvious.
10 Question mark, what is his BIP. Doesn't know.
11 Very passive. Sug -- which would have been
12 short for suggestion -- can give two choices,
13 then use -- R with a circle meaning reward. No
14 instruction. Has sack of activities.

15 Is he nonverbal, question mark. Doesn't
16 give verbal direction and minimal visual. Let
17 child determine entire session, including getting
18 undressed. Uses praise. Can pinch, unzip,
19 undress. Ask, what could help increase
20 participation? Would schedule change help? Meds
21 interfering, slash, timing.

22 I'm not sure what that says, but I
23 believe it says, Wants to sleep. Sensory input,
24 question mark.

25 Dressing. No attempt to get him to

1 - J. Weisel -

2 participate with socks, shoes, jacket. YOT,
3 question mark. Didn't utilize aide much. Says
4 she was embarrassed to ask for help.

5 Transport, slash, must accompany aide.

6 Do you want me to keep reading?

7 Q Yes, because I'm not going to be able to
8 make it out myself. I tried. And it isn't
9 identical to the typewritten, so I would like the
10 material.

11 A 10/1/15, Diane P., start time equals
12 9:10. RKF staff equals, quote unquote,
13 unfriendly, close quote.

14 R. I have a checkmark and then, zoom
15 ball. Gave number sign. For learning, gave
16 limit. Organized a shelf. Frequent verbal input
17 including positive reinforcer. Gives too much
18 support. Could give choices or ask her to pick
19 largest item.

20 Journal. I have an asterik, but I'm not
21 sure what that refers to at the moment. Asked
22 her to pick, quote, which would you like to write
23 like next, close quote. Did not ask why, so
24 point was lost. Ignored student posture. Quote,
25 try to stay above the line, close quote.

1 - J. Weisel -

2 Introduced ruler and explained this
3 ruler is doing great for you because you are
4 staying above the line.

5 Math problem, clear critique. That
6 looks like 813, but your answer is 8.3. You need
7 to make the dot really little.

8 No specific feedback on writing.
9 Referring back to original, question mark. And
10 there's an asterik, which I assume is referring
11 back to the other asterik, rather, quote, good
12 job, close quote. What does it mean.

13 Student, quote, my handwriting is better
14 today, close quote. Quote, it is, close quote,
15 but why, question mark.

16 Some reference to rule.

17 10/6/15, 11:15, Diane P., RKF.

18 Put large pegs into peg board. She
19 handed pegs to student. Told him, color. After
20 a while, she instructed student to get a peg out
21 of the bag. Could readily do this. Quote, good
22 job, close quote. No instruction to use left
23 hand as assist. Covered whole peg board. Point,
24 question mark.

25 Student readily distracted. Redirected

1 - J. Weisel -

2 him. Quote, I love that you are using two hands,
3 close quote. You're putting pegs into the bag.
4 Good work holding that bag.

5 Theraputty, quote, squeeze, close
6 quote. Only when used two hands said, quote,
7 squeeze two hands, close quote, rather hand over
8 to incorporated left hand.

9 Empty ziplock bag. Open. Put in sewing
10 kit. Close ziplock. Quote, pinch, close quote.
11 He knew to slide fingers. She wanted pinch.
12 Instructed -- I'm not sure what that word is.
13 It might be listen as she pinched. I don't know
14 what the word is.

15 Again, there's a word here I can't
16 read. I don't know what it says.

17 Q Okay.

18 A Need resume, writing sample, in
19 parenthesis.

20 Snap slash zipper vest on table. Open,
21 closed, snapped, and zipper. Added hand over
22 hand as needed. Quote, I'm done, close quote.
23 Quote, you're not done. We have to do the snaps
24 and you will be done, close quote. Quote, I like
25 that you used two hands, close quote.

1 - J. Weisel -

2 Collate paper. Take one green, one
3 white. Put over here. Gave continual visual and
4 verbal cues. No use of two hands.

5 Goals, question mark. Write name. She
6 guided pencil, parenthesis, hands on pencil.
7 Quote, hold the paper.

8 Clothes pins to board. Match color not
9 stated. Look for red. She guided to right
10 place.

11 Transitioned to class. Held his hand.
12 Why need.

13 Discussion. Plan for no, slash, done.
14 Ignore.

15 One, use both hands. Two, successfully
16 close six items using two fingers. Teacher asked
17 for help with zipping jacket. Three,
18 prevocational paper sorting. Teacher
19 recommended, in parenthesis. Work site goal,
20 parenthesis, focus was attempt to attack, close
21 parenthesis.

22 Your impression. Long-term goals:
23 Resist touch. Tolerate different textures.
24 Writing on teacher request.

25 Q So, can you summarize each of the

1 - J. Weisel -

2 observations that you wrote notes on, the
3 October 1, 2015 observation and the October 6th?

4 MS. LINEEN: Are you asking her --

5 Q Are you in a position after having read
6 the notes out to summarize the notes?

7 MS. LINEEN: Objection.

8 You can answer.

9 A For October 1st, and what was the other
10 date that you wanted?

11 Q October 6th. I think that's all in
12 here, but you can correct me if I'm wrong.

13 A Well, I will do what you ask me to do.

14 Q So, October 1st and October 6th.

15 A On October 1st, Diane gave several
16 different tasks to the student. However, she
17 gave too much support. She did not ask the
18 student -- she gave the student an instruction
19 to organize the shelf by size. She then did not
20 give the student choices or ask the student to
21 pick the largest item. She gave too much support
22 in that task.

23 She asked her to write in her journal.
24 She asked the student which writing sample she
25 wanted to write next. The student answered, but

1 - J. Weisel -

2 she did not discuss why the student picked the
3 choice that she picked.

4 She did not address the student's
5 posture sitting in the chair, I assume.

6 She introduced a ruler and said that the
7 ruler was going to help the student, but did not
8 go into how or why.

9 They did a math problem at that point.
10 She did give specific feedback, but as to her
11 writing, she did not. The student stated that
12 her handwriting was better on that day and she
13 did not talk about why. "She," meaning Diane,
14 did not discuss why it was better or give any
15 kind of instruction or therapeutic input.

16 Q What was the name of the student?

17 A I don't recall the name of the student.
18 It says here I. and up here it says R. I assume
19 the student's name is R.

20 Q Do you know where R. was a student, at
21 which school?

22 A It doesn't say on here. I believe the
23 student was at CCA according to my recollection,
24 but it does not say that on my notes, on this set
25 of notes.

1 - J. Weisel -

2 Q So, you didn't take any notes with
3 respect to the first observation in the spring,
4 but you decided to take notes with respect to
5 this observation on October 1st, right?

6 A Yes.

7 Q Was there a reason?

8 A Yes.

9 Q What was that?

10 A As I previously testified, on the first
11 observation, I don't tend to put a lot of weight
12 on that observation and I hoped that the second
13 observation is better. When I realize the second
14 observation was not better, then I started
15 keeping my notes.

16 Q The second observation was 9/30?

17 A Are you asking me a question?

18 Q Yes, I'm asking you a question.

19 A Yes. Apparently, yes.

20 Q I just want to direct you to Exhibit 2,
21 the third page, what is DEF 276.

22 A Okay.

23 Q What is theraputty?

24 A Theraputty is a material that is similar
25 to silly putty but it's a little stronger than

1 - J. Weisel -

2 that.

3 Q So, when you said theraputty here, you
4 said that's what she should have used with the
5 student? I didn't understand the point.

6 MS. LINEEN: Objection to form.

7 You can answer.

8 A No. I said theraputty because it was
9 something that was used.

10 Q Did you think that was negative? I
11 can't tell from this writing.

12 A What I found to be negative was -- the
13 theraputty in itself was not negative, no.

14 Q So, what was your concern?

15 A My concern was that I didn't feel that
16 it was being used in a therapeutic manner.

17 Q What would have been a therapeutic
18 manner?

19 A Well, when the student happened to use
20 two hands, then Diane said, Squeeze with two
21 hands, but she didn't encourage the student to
22 use two hands and didn't do anything that
23 approached therapy. It was just an activity.

24 Q I'm going to direct you to the next
25 page, which is DEF 278. Where it says "your

1 - J. Weisel -

2 impression," does that refer to you, meaning
3 Janet Weisel's, impression?

4 A No.

5 Q What is it?

6 A I don't know what it means. These were
7 notes at that time, so I don't recall exactly
8 what I meant. They were notes that were to help
9 me at that time and I did not write them to be
10 read years later, so my notes are very sketchy.
11 I assume that I was asking for Diane's impression
12 of what goals should come next.

13 Q The last question I have with respect to
14 this page is, what were you referring to when you
15 said "resist touch"?

16 A I am not sure.

17 Q You testified earlier that the student
18 involved in the October 1, 2015 observation that
19 his name was R. -- you read it in your notes
20 that it looked like the name of the student was
21 R. -- Do you recall anything else about him
22 during that session?

23 MS. LINEEN: Objection.

24 You can answer.

25 A I'm not sure what you're asking.

1 - J. Weisel -

2 Q Other than the notes that you wrote, do
3 you have any other recollection of R. during that
4 session?

5 A No. The observation was of Diane, not
6 of the student.

7 Q Well, he was part of the observation,
8 so...

9 MS. LINEEN: Is that a question?

10 MS. KALLUS: No. I'm just trying to
11 make it clear what I'm talking
12 about. I know who the observation is
13 of.

14 Q What I'm asking is, do you recall
15 anything about R. other than what you wrote down?

16 MS. LINEEN: Asked and answered.
17 You can answer again.

18 A No. I was there to observe Diane.

19 Q One more question with respect to R. Do
20 you remember any psychiatric issues that arose
21 just prior to his session with Diane?

22 MS. LINEEN: Objection.

23 You can answer, if you can.

24 A I would have to refer to notes, but do I
25 remember at this moment, no.

1 - J. Weisel -

2 MS. KALLUS: I'm going to take a
3 ten-minute break, if that's okay.

4 MS. LINEEN: It's 11:14.

5 (Whereupon, a recess took place.)

6 MS. KALLUS: I just want to remind
7 Ms. Weisel -- this is a statement,
8 not a question -- that you're under
9 oath the entire time that you're
10 being deposed, even during breaks, so
11 you're not permitted to share or have
12 a conversation about the subject of
13 your testimony with your attorney.

14 Q Do you recall which schools Diane Peritz
15 worked at while she was employed by BOCES?

16 A Yes.

17 Q What were those schools?

18 A She started at Rosemary Kennedy and
19 Jerusalem Avenue, and then she worked at -- I
20 believe. I could be mistaken, but I think so.
21 And then she worked at Rosemary Kennedy and CCA.

22 Q Did you get any feedback from CCA
23 personnel about her work?

24 A From any personnel at all whatsoever?

25 Q Teachers, aides, therapists.

1 - J. Weisel -

2 A Yes.

3 Q Starting by category, what did you hear
4 from therapists?

5 A That she saw her students and that she
6 was not very open to suggestions.

7 Q Do you recall who said that?

8 A Yes.

9 Q The name of the person?

10 A Leora Friedman.

11 Q Did any teachers give you feedback with
12 respect to Diane?

13 A No.

14 Q Did any aides give you feedback with
15 respect to Diane Peritz?

16 A No.

17 Q Do you recall when you learned that
18 Diane had a medical problem?

19 A Some time during the summer of 2015.

20 Q Do you recall having any conversations
21 with her about her medical problem?

22 A Yes.

23 Q Can you describe some of those
24 conversations?

25 A I don't remember specifics. I do

1 - J. Weisel -

2 remember that I had conversations with her.

3 Q Conversations suggesting that she could
4 come back to work? Did you tell that to her?

5 A Yes. I told her that if she thought she
6 could come back to work with an accommodation,
7 that HR would look at her doctors' notes and make
8 any reasonable accommodation.

9 Q Did she ever ask you to come to the
10 office during the summer in a wheelchair to
11 finish some of her notetaking?

12 A Yes. Not to the office, but to one of
13 the schools. Yes.

14 Q What was your response to that request?

15 A That wasn't BOCES' policy to come in
16 during the day when students are there when
17 you're not working.

18 Q I'm not sure I understand that. It's
19 BOCES' policy not to allow any BOCES employees
20 who are not working over the summer to come in to
21 the school to do work related to their --

22 A If a therapist is not working because
23 they have a medical issue, it is BOCES' policy
24 that they not come in and put themselves at risk
25 to come in when the students are there. The

1 - J. Weisel -

2 students have behavioral issues and if they're
3 not supposed to be there because they can't be
4 working because of medical problems, that they
5 are not supposed to come in due to liability
6 issues.

7 Q Did you consider that she was on medical
8 leave at that time when she asked permission to
9 come in?

10 A No. That's a specific thing, a medical
11 leave, and she was not on medical leave.

12 Q Do you recall her asking if she could go
13 on medical leave?

14 A I don't recall using that phrase, no.

15 Q Did you participate in meetings related
16 to setting up the accommodation?

17 A The meetings with HR?

18 Q Yes.

19 A Yes, I did participate in those.

20 Q Do you recall what your input was?

21 A Not specifically. At those meetings,
22 most of the conversation is between the person
23 from HR running the meeting and the person
24 requesting the reasonable accommodations.

25 Q Were you concerned at all that Diane

1 - J. Weisel -

2 wouldn't be able to perform her job after she
3 received the accommodation?

4 A After she received the accommodation?
5 No, I wasn't concerned about that.

6 Q Did you think that she would be able to
7 perform her job?

8 A Given her accommodation, yes, I saw no
9 reason for her not be able to.

10 Q Did you believe coming with the
11 accommodation was better than giving her a short
12 leave?

13 MS. LINEEN: Objection to form.

14 You can answer.

15 A That's not a question I can answer. I
16 believe that if she needed an accommodation, that
17 BOCES would work with her and provide a
18 reasonable accommodation.

19 Q Did you say that to her, that you
20 thought that the accommodation would be
21 sufficient so she wouldn't have to take a short
22 leave?

23 MS. LINEEN: Objection to form.

24 You can answer.

25 A I don't recall if I used those words.

1 - J. Weisel -

2 Q When you wrote up the notes that we
3 discussed that were Plaintiff's Exhibit 2 prior
4 to participating in the observation, had you
5 reached a conclusion about Diane's skills?

6 MS. LINEEN: Objection to form.

7 You can answer.

8 A I don't understand. That wasn't to help
9 me to determine her skills.

10 Q So, as of September 30, 2015, you hadn't
11 made up your mind about Diane's skills? I'm just
12 trying to get it straight.

13 A No, I had not made up my mind.

14 MS. KALLUS: I'm going to have this
15 marked as Exhibit 4.

16 (Whereupon, Plaintiff's Exhibit 4
17 was marked for identification.)

18 Q I'm going to have you take a look at
19 Plaintiff's Exhibit 4.

20 A (Complying.)

21 Q Are you ready?

22 A Yes.

23 Q This appears to be a letter addressed to
24 Whom It May Concern, and the author is listed as
25 Christina Broderick. Who is Christina Broderick?

1 - J. Weisel -

2 A I have no idea. I don't know her.

3 Q Did you receive this letter previously?

4 A No. I've never seen it before.

5 Q Is the subject matter discussed in the
6 letter subject matter that you're aware of with
7 respect to Diane?

8 A The subject was discussed in the
9 meeting, yes, but I've never seen this letter.

10 Q What is room 109A? Do you know what
11 that is?

12 A That's a classroom in Rosemary Kennedy.

13 Q Would you know to whom Christina
14 addressed this letter, the individuals? I know
15 it says, To Whom It May Concern.

16 A Well, I've never seen that letter, so I
17 don't know.

18 Q There's a lot of references to OT in it
19 which is why I thought you would have familiarity
20 with this letter. So, you've never seen it.

21 I'm just going to take a few lines and
22 ask you some questions about that. It says here
23 on line seven, Diane has refused to hold their
24 hand in order to escort them to OT, as well as
25 complained of some of their behaviors.

1 - J. Weisel -

2 Did you understand that Diane had
3 refused to hold the hands of students, not
4 necessarily the students in room 109A but in
5 other classrooms?

6 MS. LINEEN: Objection to form.

7 You can answer.

8 A Yes, I was made aware of that.

9 Q Who made you aware of that?

10 A The principals at Rosemary Kennedy
11 School.

12 Q Who was that?

13 A John Picarello and Bonnie Heller.

14 Q Bonnie Heller had seen Diane refusing to
15 hold the hand of her students, as far as you
16 know, or that's what you heard?

17 MS. LINEEN: Objection to form.

18 You can answer.

19 A That's not what I testified. You asked
20 me how I knew about this. She told me. I don't
21 know that she observed it.

22 Q So, Bonnie Heller said that Diane had
23 refused to hold the hands of students?

24 MS. LINEEN: Objection to form.

25 You can answer.

1 - J. Weisel -

2 A Bonnie Heller told me that it had been
3 reported that Diane refused to hold hands. I
4 didn't say that Bonnie Heller saw it.

5 Q How do you think you can distinguish
6 between refusing to hold hands and being unable
7 to hold hands?

8 MS. LINEEN: Objection to form.

9 You can answer, if you can.

10 A I don't know think I can. I don't know
11 that person's thinking. I don't want to
12 interpret for her.

13 Q Setting aside this letter, you did
14 consider Diane's handholding as one of the issues
15 that surrounded her employment with BOCES?

16 MS. LINEEN: Objection to form.

17 You can answer.

18 A I never saw this letter until today.

19 Q I'm not asking about the letter.

20 A Then, I don't understand your question.

21 Q Did you consider that Diane had a
22 problem handholding when you considered your
23 evaluation of her in your other observations?

24 MS. LINEEN: Objection to form.

25 You can answer.

1 - J. Weisel -

2 A In my observations, I did note that she
3 did not accompany the students. She needed to be
4 reminded that she needed to accompany the
5 students, not specifically handholding. That's
6 not part of the observation. However, I was
7 informed that that was reported to be an issue,
8 so it was part of the overall consideration.

9 Q Who were the people reporting concerns
10 about handholding?

11 A Well, apparently Christina Broderick is
12 one.

13 Q But you didn't rely on Christina
14 Broderick because you never saw this letter
15 before?

16 MS. LINEEN: Is that a question?

17 MS. KALLUS: Yes, it's a question.
18 Can you believe it? Questions don't
19 only begin with what, which, when,
20 where, why.

21 MS. LINEEN: Calm down. It's not a
22 question.

23 MS. KALLUS: It is a question.

24 MS. LINEEN: Objection to form.

25 You can answer.

1 - J. Weisel -

2 MS. KALLUS: I'm perfectly calm.

3 I'm just exhausted.

4 A I'm having trouble understanding the
5 question when it does not come with a who, what,
6 where, when, why. Sorry. It's difficult for me
7 to understand what the question is.

8 MS. KALLUS: Can you read back the
9 last question.

10 (Whereupon, the record was read by
11 the reporter.)

12 Q You testified earlier that you never saw
13 Christina Broderick's letter before, the one that
14 is now marked as Plaintiff's Exhibit 4, right?

15 A Yes.

16 Q Did other teachers, aides, or therapists
17 report similar concerns with respect to Diane's
18 handholding?

19 A Yes.

20 Q Could you identify any of these
21 individuals?

22 A I cannot identify the aides. They
23 reported to the principals who supervised them.
24 I don't supervise the aides. Selena Roberts was
25 the lead therapist at the time in Rosemary

1 - J. Weisel -

2 Kennedy, and she reported it, as wall.

3 Q That Diane wasn't holding hands of the
4 students?

5 MS. LINEEN: Objection.

6 Q Question mark.

7 MS. LINEEN: Objection to form.

8 You can answer.

9 A Yes.

10 Q Did Selena know that Diane had an
11 accommodation?

12 A She did not know that from me, no. I
13 don't know whether she knew.

14 Q Did you discuss in the accommodation
15 meetings that you participated in how to address
16 the push-pull issues that Diane had?

17 MS. LINEEN: Objection to form.

18 You can answer.

19 A Yes.

20 Q Could you describe the substance of that
21 conversation?

22 A Yes. Diane was told verbally and, I
23 believe in writing, that if she felt that she
24 needed assistance, that she needed to request it,
25 that she needed to go to one of the principals

1 - J. Weisel -

2 and tell them that she needed assistance. That
3 she could ask an aide or a teacher. She needed
4 to ask.

5 Q Do you know whether any of the teachers
6 or therapists that Diane worked with knew she had
7 an accommodation that involved pushing and
8 pulling and lifting?

9 A I didn't inform anybody, so I can't --
10 I don't know.

11 MS. KALLUS: I have another
12 document.

13 (Whereupon, Plaintiff's Exhibit 5
14 was marked for identification.)

15 Q I'm going to show you what has been
16 marked as Plaintiff's Exhibit 5. I just have a
17 few questions for you.

18 MS. LINEEN: Can you identify the
19 exhibit for the record?

20 MS. KALLUS: The exhibit consists of
21 four pages beginning DEF 301 to DEF
22 304. It appears to be notes.

23 MS. LINEEN: I'm going to note for
24 the record that I don't know that
25 this four-page document is all one

1 - J. Weisel -

2 document.

3 MS. KALLUS: They just followed each
4 other in the group that you produced
5 to me. I'm not sure it is either,
6 but I know that 305 is Christina
7 Broderick's letter, so it seems like
8 it may actually be.

9 Q Having said that, I just have a few
10 questions. Is this your handwriting?

11 A No.

12 Q Do you know whose handwriting it is?

13 A No, I do not.

14 Q Does this appear to be some kind of
15 observation?

16 MS. LINEEN: Objection to form.

17 You can answer, if you can.

18 A I have no idea what this is.

19 Q Do you know who Georgette Vacaro is?

20 A I do not.

21 Q Do you know who the student C.A. is
22 listed at the top of the page on DEF 301?

23 A I do not.

24 Q The notes prepared apparently by
25 Georgette Vacaro on the first page state that

1 - J. Weisel -

2 Diane seems afraid of the students. There's no
3 bond at all.

4 Is that report similar to the ones you
5 received by other individuals at BOCES?

6 MS. LINEEN: Objection to form.

7 You can answer.

8 A Yes.

9 Q So, you conducted three observations of
10 Diane?

11 A No. I conducted four.

12 Q Is it your testimony that Diane was
13 afraid of the students?

14 MS. LINEEN: Objection.

15 You can answer.

16 A I didn't testify to that. I didn't.

17 MS. KALLUS: I suggest that we have
18 a short lunch break and then resume.

19 MS. LINEEN: It's 12:20. We'll plan
20 to be back at 12:50.

21 (Whereupon, a lunch recess took
22 place.)

23 Q You testified that there were four
24 observations of Diane Peritz in total during her
25 probationary period. Three of those observations

1 - J. Weisel -

2 took place beginning on September 30th. Was
3 there a reason that the observations were not
4 spread out through the probationary period?

5 MS. LINEEN: Objection to form.

6 You can answer.

7 A Yes.

8 Q What was the reason?

9 A Because I don't do observations over the
10 summer because that period of time is not covered
11 by therapists' contracts so they're not done over
12 the summer.

13 Q And you didn't have any time between the
14 March observation and June?

15 MS. LINEEN: Objection to form.

16 A I didn't observe her in March.

17 Q What was the date of your first
18 observation?

19 A I believe it was in May.

20 Q Did you get Diane's feedback after the
21 observation in May?

22 A Yes.

23 Q That was oral?

24 A Yes.

25 Q Did you give her feedback after the

1 - J. Weisel -

2 observation on September 30th?

3 A Yes.

4 Q What was the feedback with respect to
5 the 9/30/15 observation?

6 A I would need to refer to the notes.

7 MS. LINEEN: Your handwritten
8 notes?

9 THE WITNESS: Yes. Or the typed
10 note, either one, but I have to refer
11 back.

12 MS. LINEEN: Turning to Exhibits 2
13 and 2A and Exhibit 3.

14 A I just need a second to read this.

15 Q Okay.

16 A (Reading document.)

17 Okay. Can you ask me your question
18 again?

19 MS. KALLUS: Can you read it back.

20 (Whereupon, the record was read by
21 the reporter.)

22 A I told Diane that she needed to know
23 where she was going to work with a student prior
24 to walking into the room.

25 I spoke to her about speaking to the

1 - J. Weisel -

2 teacher. There was an issue with the student
3 being asleep and also needed toileting, which cut
4 greatly into her treatment time, so we talked
5 about assuring that the teacher did schedule so
6 the student could be toileted prior to the
7 session.

8 I asked about whether the student had a
9 BIP and Diane did not know. I asked whether a
10 change of schedule might help because the student
11 was so sleepy and we discussed that. We talked
12 about ways to work with the student that might
13 increase the arousal state. We talked about
14 sensory input. We talked about using therapeutic
15 modalities to help the situation in the future.

16 We talked about the one-to-one aide.
17 Diane did not utilize the one-to-one aide, so we
18 discussed that, and Diane stated that she did not
19 because she was embarrassed to ask, so we talked
20 about that.

21 We talked about what the goal was that
22 she was working on because therapy sessions have
23 to address student goals.

24 We talked about the fact that it was an
25 unsuccessful session and Diane agreed that it was

1 - J. Weisel -

2 an unsuccessful session and that she had little
3 to no therapeutic control, instructional control
4 over the student.

5 And we agreed that I would be doing
6 additional observations both in CCA and RKS.

7 Diane also complained that RKS staff was
8 unfriendly towards her and we talked about that,
9 as well.

10 Q As of that date when you gave Diane that
11 feedback, did you believe that there was
12 sufficient time for Diane to improve prior to the
13 conclusion of her probationary period
14 realistically?

15 MS. LINEEN: Objection to form.

16 You can answer.

17 A Diane presented herself as being an
18 experienced therapist having many years of
19 experience and, therefore, yes, I think that she
20 certainly had the opportunity to improve.

21 Q In such a brief time frame from 9/30 to
22 some time in early October?

23 MS. LINEEN: Objection to form.

24 Asked and answered. You can answer
25 again.

1 - J. Weisel -

2 A As I said, Yes, I felt that she could
3 improve.

4 Q Were you aware of how many times Diane
5 had treated the student on the September 30th
6 observation?

7 A I have in my notes that she said --
8 I think I saw that in my notes. Excuse me one
9 second. She had seen the student two or three
10 times.

11 Q Were you aware that the student, on the
12 9/30 observation, had been significantly
13 medicated that day by his parents?

14 MS. LINEEN: Objection to form.

15 You can answer.

16 A No. I'm not aware of any medication
17 issues.

18 Q But you stated in your notes he was very
19 sleepy?

20 A Yes.

21 MS. KALLUS: Can I have this marked.

22 (Whereupon, Plaintiff's Exhibit 6
23 was marked for identification.)

24 Q I'm going to show you what has been
25 marked as Plaintiff's Exhibit 6. It's a letter

1 - J. Weisel -

2 dated October 5, 2015 written by Bonnie Heller.

3 A Yes.

4 Q Did you participate in the preparation
5 of this letter?

6 A I believe I did. It was not written by
7 me, however.

8 Q But you reviewed earlier versions of
9 that letter?

10 A Yes.

11 Q Just pointing you in the direction of
12 the third paragraph, it says, It was reported by
13 two staff members that you were reluctant to hold
14 a student's hand.

15 A Okay.

16 Q It says it was reported by two staff
17 members. Do you know who the staff members are
18 specifically?

19 A No, I don't. They did not report that
20 to me. They reported it to one of the
21 principals.

22 Q So, in the course of your four
23 observations, did you observe Diane having
24 trouble or being reluctant to hold a student's
25 hand?

1 - J. Weisel -

2 A As I testified earlier, that would not
3 have been part of an observation. I was
4 observing the session, not the transportation
5 through the hallway.

6 Q Just pointing you to the fourth
7 paragraph, which summarizes your observations on
8 September 30, 2015. Is that an accurate summary
9 of your observation?

10 A I believe so.

11 Q During your four observations, did you
12 believe that Diane was capable of performing her
13 job?

14 MS. LINEEN: Objection to form.

15 You can answer.

16 A At the beginning of the observations or
17 by the end? It was over a span of time. I don't
18 know how to answer that question.

19 Q I guess we can do it observation-by-
20 observation, so with respect to the first
21 observation.

22 A The first observation, I certainly
23 believed that she would be able to perform the
24 job.

25 Q Second observation?

1 - J. Weisel -

2 A I started having concerns.

3 Q Third observation?

4 A I was having significant concerns and
5 discussed it with my supervisors. And by the
6 fourth observation, I felt that she needed, at
7 the very least, more time. She wasn't performing
8 the way I would have expected.

9 Q Once you made that determination after
10 the fourth observation, what did you do?

11 A I spoke to my supervisors and to HR.

12 Q Were you the person who made the
13 decision that the Board should consider her
14 position and terminate her probationary period?

15 MS. LINEEN: Objection to form.

16 You can answer.

17 A No.

18 Q You didn't make that decision?

19 A No.

20 Q So, who did?

21 A HR makes that decision. Central
22 office. I do not.

23 Q They made that decision about Diane
24 based upon what information?

25 A Based upon the information that I gave

1 - J. Weisel -

2 them regarding the observations, and based upon
3 the information that they received from the
4 schools, particularly from Ms. Heller and
5 Mr. Picarello.

6 Q Mr. Picarello participated in the
7 decision to bring to HR's attention that Diane
8 should be terminated?

9 MS. LINEEN: Objection to form.

10 You can answer, if you can.

11 A I don't know if he specifically spoke to
12 HR. I know he was the principal in the school,
13 so sometimes those situations are handled by one
14 principal and sometimes situations are handled by
15 both. I'm not specifically sure. I know he was
16 involved at times. I don't know if he was
17 involved at that point.

18 MS. KALLUS: Do you mind if I step
19 out for a minute?

20 MS. LINEEN: Sure.

21 (Whereupon, a short recess took
22 place.)

23 MS. KALLUS: I have one last
24 question.

25 Q How many therapists do not get

1 - J. Weisel -

2 recommended for permanent status at BOCES on an
3 annual basis?

4 MS. LINEEN: Objection to form.

5 You can answer.

6 A I really can't answer. Everybody stands
7 on their own, so it's always different. There's
8 different numbers of people hired in the year.
9 It varies tremendously.

10 Q Do you know how many occupational
11 therapists work for BOCES and were under your
12 supervision the year that Diane was hired in
13 2015?

14 A Yes. As I testified before, it was
15 probably 60 or 65. I'm guessing. I don't know
16 specifically.

17 Q And you supervised all of them?

18 A Yes.

19 Q Along with your supervisor or on your
20 own?

21 A Along with my supervisor. Also the
22 physical therapists.

23 MS. KALLUS: Thank you for your
24 time.


25 MS. LINEEN: I don't have any

- J. Weisel -

questions. I'm just going to reserve
our right and request that the
witness be given an opportunity to
review and sign the transcript.

MS. KALLUS: Of course.

(Time noted: 1:20 p.m.)


JANET WEISEL

Subscribed and sworn to before me
this 29th day of August, 2017

NOTARY PUBLIC



ROSEMARIE AVERSANO
NOTARY PUBLIC, State of New York
No. 4662605
Qualified in Nassau County
Term Expires March 30, 2017
N.Y.

- J. Weisel -

I N D E X

WITNESS

Janet Weisel

EXAMINATION BY

PAGE

Ms. Kallus

4

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- J. Weisel -

CERTIFICATION

I, LAURA PINTO, a Notary Public in and for
the State of New York, do hereby certify:

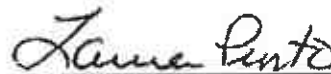
THAT the witness whose testimony is
hereinbefore set forth, was duly sworn by me; and

THAT the within transcript is a true record
of the testimony given by said witness.

I further certify that I am not related,
either by blood or marriage, to any of the
parties to this action; and

THAT I am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 4th day of August, 2017.


LAURA PINTO



1 Errata Sheet

2

3 NAME OF CASE: DIANE PERITZ -against- SERVICES

4 DATE OF DEPOSITION: 07/26/2017

5 NAME OF WITNESS: Janet Weisel

6 Reason Codes:

7 1. To clarify the record.

8 2. To conform to the facts.

9 3. To correct transcription errors.

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22 Page _____ Line _____ Reason _____

23 From _____ to _____

24

25

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